

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 7:19cv325
	)	
	)	
V.	)	
	)	
BRESEE TRUCKING COMPANY,	)	
INC.	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, United States of America, hereby alleges as follows:

**INTRODUCTION**

1. This action is brought by the United States of America to collect civil penalties and other amounts owed to the United States under the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801, *et seq.* (“Mine Act”), and the Federal Debt Collection Procedures Act (“FDCPA”), 28 U.S.C. § 3001, *et seq.*, as applicable.

2. Defendant has continuously failed to pay Mine Act violations, totaling \$178,966.47 inclusive of penalties and interest. As a result, the United States seeks to enforce collection of this debt.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 because the United States is the plaintiff. The Court also has jurisdiction under Section 110(j) of the Mine Act, 20 U.S.C. § 820(j).

4. Venue is proper in the Western District of Virginia pursuant to 28 U.S.C. § 1391(b)(2).

### **PARTIES**

5. Plaintiff is the United States of America acting pursuant to its authority under the Mine Act and FDCPA to collect debts owed to it for unsafe mine conditions under the Mine Act.

6. The defendant is Bresee Trucking Company, Inc., a Virginia corporation with its principal place of business in Big Stone Gap, Virginia.

### **FACTS**

7. Between May 21, 2014 and December 21, 2016, the Mine Safety and Health Administration (“MSHA”) issued 29 citations to Defendant for violations of the Mine Act. MSHA assessed civil penalties for each violation pursuant to the Mine Act.

8. For the citations referred to in Paragraph 7, MSHA assessed civil penalties totaling \$174,082.00. The citations and penalties are, therefore, final orders within the meaning of Section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

9. Because Defendant has failed to pay these civil penalties in full, MSHA has referred many of these debts to the United States Department of Treasury (“Treasury”) for collection, subjecting the penalties to additional interest, penalties, and fees. For the civil penalties identified in Paragraph 8, Defendant is indebted to the United States for interest in the amount of \$370.37, additional penalties in the amount of \$150.53, Department of Treasury Financial Management Services fees in the amount of \$39,876.08, and Department of Justice fees in the amount of \$5,368.99. *See* Certificates of Indebtedness, attached as Exhibit A.

10. As the operator of the coal or other mine for which the citations and penalties described above were issued, Defendant is liable for the unpaid civil penalties pursuant to Section 110(j) of the Mine Act, 30 U.S.C. § 820(j).

### **PRAYER FOR RELIEF**

The United States of America respectfully requests the following relief:

1. A Judgment against Defendant for the principal amount of unpaid civil penalties, interest and administrative costs owed to the United States for Mine Act violations, in an amount not less than \$133,200.50;
2. A Judgment against Defendant for interest on the principal amount of the unpaid civil penalties at the rate of 8% per annum authorized by Section 110(j) of the Mine Act, 30 U.S.C. § 820(j).
3. A Judgment against Defendant for additional penalties in the amount of \$150.53, Department of Treasury Financial Management Services fees in the amount of \$39,876.08, and Department of Justice fees in the amount of \$5,368.99.
4. Any other appropriate relief.

Respectfully submitted,

THOMAS T. CULLEN  
United States Attorney

s/ Krista Consiglio Frith  
Assistant United States Attorney  
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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

UNITED STATES

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Krista Frith  
US Attorneys Office  
3101st St. SW, Room 906, Roanoke, VA 24011

**DEFENDANTS**

Bressee Trucking Company, INC.

County of Residence of First Listed Defendant Wise County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                                   |
|---|----------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

30 U.S.C. 801 and 28 U.S.C. 3001

Brief description of cause:

Suit to enforce collection of civil penalties and interest against the defendants for failure to pay Mine Act violations.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

178,966.47

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/22/2019

SIGNATURE OF ATTORNEY OF RECORD

s/ Krista Consiglio Frith

FOR OFFICE USE ONLY

RECEIPT #

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